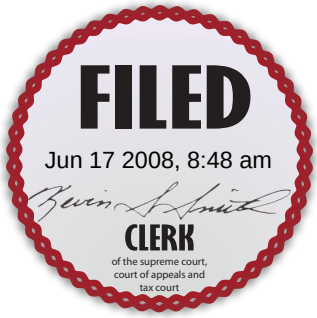

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IN THE
COURT OF APPEALS OF INDIANA

TIMOTHY SCHAUB,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 46A03-0801-CR-12
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAPORTE CIRCUIT COURT
The Honorable Thomas Alevizos, Judge
Cause No. 46C01-0705-FA-220

June 17, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Timothy Schaub ("Schaub") appeals the forty-year sentence imposed following his plea of guilty but mentally ill to Attempted Murder.[1] We affirm.

Issues

Schaub presents two issues for review:

I. Whether the trial court abused its sentencing discretion; and

II. Whether his sentence is inappropriate.

Facts and Procedural History

Schaub and Katie Perkins ("Perkins") dated during high school until their April 2007 break-up. A day or two after Perkins broke up with Schaub, Schaub appeared at Perkins' home and asked to come in. When Perkins refused Schaub entry, he pulled out a gun and shot Perkins in the forehead. He then turned the gun on himself. Perkins survived but suffered paralysis on her right side. At the hospital, Schaub confessed that he shot Perkins.

On May 4, 2007, the State charged Schaub with Attempted Murder and Aggravated Battery. On October 5, 2007, Schaub pled guilty but mentally ill to Attempted Murder. On December 13, 2007, the trial court sentenced Schaub to forty years imprisonment. He now appeals.

Discussion and Decision

I. Abuse of Discretion

The range of possible sentences for a Class A felony is between a minimum of twenty years and a maximum of fifty years with an advisory sentence of thirty years. Ind. Code §

35-50-2-4.

In sentencing Schaub to forty years imprisonment, the trial court recognized three aggravators: the extent of the victim's injuries, the history of uncharged acts bearing a close relationship to the instant offense, and Schaub's failure to benefit from prior contacts with the legal system. The trial court also recognized two mitigators: Schaub's lack of criminal history of convictions and his guilty plea. Schaub argues that the trial court abused its sentencing discretion.

In Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007), our Supreme Court determined that trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense. The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. Id. If the recitation includes the finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. Id. So long as it is within the statutory range, a sentencing decision is subject to review on appeal for an abuse of discretion. Id.

One way in which a trial court may abuse its discretion is to fail to enter a sentencing statement at all. Id. Another is to enter a sentencing statement that explains reasons for imposing a sentence and the record does not support the reasons, the statement omits reasons clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. Id. at 490-91.

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[1] Ind. Code §§ 35-42-1-1, 35-41-5-1.

However, under the new advisory statutory scheme, the relative weight or value assignable to reasons properly found, or to those that should have been found, is not subject to review for abuse of discretion. Id. at 491.

Schaub first argues that the trial court improperly enhanced his sentence based upon facts not admitted by him or found by a jury, citing Smylie v. State, 823 N.E.2d 679 (Ind. 2005). However, Schaub committed his offense after the Indiana Legislature amended our criminal sentencing scheme to provide for advisory sentences rather than presumptive sentences. Under the new advisory sentencing scheme, a court may impose any sentence that is authorized by statute and permissible under the Indiana Constitution "regardless of the presence or absence of aggravating circumstances or mitigating circumstances." Ind. Code § 35-38-1-7.1(d).

Schaub also contends that the trial court should not have considered his past conduct that did not result in criminal convictions. Schaub was subject to multiple orders of protection and had been arrested for a violation. It is true that a record of arrest, without more, is not evidence of a prior criminal history. See Cotto v. State, 829 N.E.2d 520, 526 (Ind. 2005). However, information of a defendant's prior contacts with law enforcement is relevant to the trial court's assessment of the defendant's character and the risk that he will commit another crime. Miller v. State, 709 N.E.2d 48, 49-50 (Ind. Ct. App. 1999). The trial court did not abuse its discretion by considering Schaub's history of harassing young women until they obtained protective orders against him and his violation of a protective order.

Finally, Schaub claims that the trial court abused its discretion when it improperly

"discounted" the mitigating circumstances of his guilty plea and lack of criminal history. Appellant's Brief at 6. To the extent that Schaub argues that the trial court accorded insufficient weight to his guilty plea and his lack of criminal history, the issue is not available for review. Anglemyer, 868 N.E.2d at 491. We turn to our review of the nature of the offense and the character of the offender.

II. Inappropriateness of Forty-year Sentence

Schaub requests that we reduce his sentence in accordance with Indiana Appellate Rule 7(B), which provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender."

With regard to the nature of the offense, the advisory sentence is the starting point in our consideration of an appropriate sentence for the crime committed. Childress v. State, 848 N.E.2d 1073, 1081 (Ind. 2006). The nature of the offense is that Schaub shot eighteen-year-old Perkins in the center of her forehead because she broke up with him. Perkins sustained permanent brain damage and, after coming out of a coma, can communicate only in one or two word sentences. She is paralyzed on her right side, has a "dead" right arm, and must wear a brace on her right leg. (Tr. 58.) She will require medical treatment for the remainder of her life. The circumstances of the crime militate toward a sentence greater than the advisory sentence.

As to the character of the offender, Schaub has no history of criminal convictions. However, three young women had complained to law enforcement officials that Schaub had

stalked or harassed them. Two of the young women had obtained protective orders against Schaub. It appears that Schaub suffered from clinical depression. However, despite the protective orders against him, Schaub did not pursue mental health treatment to address his anti-social tendencies.

Schaub decided to plead guilty, which spared the State the expense of a trial. A guilty plea demonstrates a defendant's acceptance of responsibility for the crime and at least partially confirms the mitigating evidence regarding his character. Cotto, 829 N.E.2d at 525. Indiana courts have recognized that a defendant who pleads guilty deserves to have mitigating weight extended to the guilty plea in return, but it is not automatically a significant mitigating factor. Davis v. State, 851 N.E.2d 1264, 1268 n.5 (Ind. Ct. App. 2006), trans. denied. Here, however, when Perkins and Schaub were found wounded, Schaub had a gun beside him. Police officers determine that the gun belonged to Schaub's father and Schaub confessed to shooting Perkins. Thus, Schaub's decision to plead guilty may well have been a pragmatic one. See Wells v. State, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005) (observing that a guilty plea does not rise to the level of significant mitigation where the evidence against the defendant is such that the decision to plead guilty is merely a pragmatic one), trans. denied.

In sum, neither the nature of the offense nor the character of the offender suggests a lesser sentence than that imposed, which is ten years above the advisory sentence and ten years less than the maximum sentence. Schaub has not persuaded us that his forty-year sentence is inappropriate.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.